

To the Honorable Council City of Norfolk, Virginia

March 18, 2014

From:

Steven J. Anderson, Director Department of

Development

Subject: Conveyance of a GEM Lot

Located at SS Portal Road to Joel J.

Lopez and Kelley Lee Lopez

Reviewed: Ronald H. Williams, Jr., Assistant City

Manager /<

Ward/Superward: 5/6

Approved:

Item Number:

PH-1

Marcus D. Jones, City Manager

Recommendation: Adopt Ordinance 1.

11. **Applicant:** Joel J. Lopez and Kelley Lee Lopez

8473 Portal Road Norfolk, VA 23503

III. Description

This agenda item authorizes the scheduling of a Public Hearing to repeal ordinance #45,169 adopted July 9, 2013, conveying the Portal Road Parcel to William Brizzie and Kelley Brizzie, and authorizing the conveyance to Joel J. Lopez and Kelley Lee Lopez. This parcel is a GEM Lot and was acquired by the City under Section 58.1-3970.1 of the Code of Virginia, 1950, as amended. This parcel is to be conveyed to the owners of the adjacent property Joel J. Lopez and Kelley Lee Lopez under the GEM Side Lots for Side Yard Disposition Program.

IV. **Analysis**

Joel J. Lopez and Kelley Lee Lopez propose to use this GEM Lot to extend their yard (see attached aerial). Conveying this GEM Lot to Joel J. Lopez and Kelley Lee Lopez will enable the City to place the property back on the tax rolls. No specific City use has been identified for this property and therefore, conveyance to the adjacent property owners is consistent with the goals of the GEM Side Lot for Side Yard Disposition Program.

V. **Financial Impact**

This parcel will be conveyed to Joel J. Lopez and Kelley Lee Lopez at no cost. However, they will pay typical costs of closing. The Fiscal Year 2014 Assessed Value of the Parcel is \$23,200; resulting in new tax revenue of \$257.52 annually.

VI. <u>Environmental</u>

There are no known environmental issues associated with this property.

VII. <u>Community Outreach/Notification</u>

In accordance with the Norfolk City Charter and Virginia State law, a legal notice will be posted in the *Virginian-Pilot*. In addition, public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. <u>Board/Commission Action</u>

N/A

IX. <u>Coordination/Outreach</u>

This letter has been coordinated with the Department of Development - Division of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Conveyance Agreement
- Declaration of Protective and Restrictive Covenants

2/20/2014-km

Form and Correctness Approved:

alhanni Jean

Office of the City Attorney

Contents Approved:

DEPT

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE REPEALING ORDINANCE #45,169 ADOPTED July 9, 2013, AND AUTHORIZING THE CONVEYANCE TO JOEL J. LOPEZ AND KELLEY LEE LOPEZ OF A CERTAIN PARCEL OF PROPERTY, ACQUIRED BY THE CITY OF NORFOLK PURSUANT TO SECTION 58.1-3970.1 OF THE CODE OF VIRGINIA, 1950, AS AMENDED, AND APPROVING THE TERMS AND CONDITIONS OF THE CONVEYANCE AGREEMENT.

WHEREAS, by Ordinance #45,169, adopted on July 9, 2013, Council authorized the conveyance to William H. Brizzie and Kelley L. Brizzie, of a certain parcel of property described as SS Portal Road, and being further described in Exhibit A attached hereto ("Portal Road Parcel"), the said parcel having been conveyed to the City by Special Commissioner's deed executed and delivered pursuant to a decree entered by the Circuit Court of the City of Norfolk in accordance with the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended; and

WHEREAS, the City has since been advised by William H. Brizzie that he no longer has an ownership interest in the property located adjacent to the Portal Road Parcel and therefore no longer has an interest in acquiring the Portal Road Parcel; and

WHEREAS, the Portal Road Parcel is a non-conforming lot upon which no stand-alone structure can be built and,

therefore, the said lot has very limited value; and

WHEREAS, Council has determined that said lot is not needed for any of the uses or purposes of the City; and

WHEREAS, Joel J. Lopez and Kelley Lee Lopez now own the property adjacent to the Portal Road Parcel and have requested that the Portal Road Parcel be conveyed to them in accordance with the City's policy regarding the conveyance of such lots; and

WHEREAS, Council is agreeable to conveying the Portal Road Parcel to Joel J. Lopez and Kelley Lee Lopez in accordance with the terms and conditions of the Conveyance Agreement, attached hereto as Exhibit B; now therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Ordinance #45,169 adopted on July 9, 2013, authorizing the conveyance of the Portal Road Parcel to William H. Brizzie and Kelley L. Brizzie, is hereby repealed.

Section 2:- That, notwithstanding the provisions of Section 2-12 of the Norfolk City Code, 1979, which requirements are hereby specifically waived, the conveyance of the Portal Road Parcel to Joel J. Lopez and Kelley Lee Lopez, upon certain terms and conditions consistent with the Conveyance Agreement attached as Exhibit B, is hereby authorized and approved.

Section 3:- That the City Manager, and other proper officers of the City, are authorized to execute a Conveyance Agreement on behalf of the City of Norfolk, to deliver to Joel J. Lopez and Kelley Lee Lopez a Special Warranty Deed in form satisfactory to the City Attorney, and to do all other things necessary and proper to effect the conveyance to them of the Portal Road Parcel.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

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EXHIBIT "A" Tax Account Number 0275-4900

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Triangular Lot East of Lot 76 And Southwest of Portal Road

An irregular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: BEGINNING at a point that is the northeast corner of Lot 76, said point being shown on a plat entitled, "Section 1, Devon Manor," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 26 at Page 91; thence, from the point of beginning thus described, S 29°-45'-35" E, 114.04 feet, more or less, along the western line of Portal Road to a point on an eastern boundary of said Devon Manor; thence, S 33°-12'-00" W, 2.07 feet, more or less, to a point on the southern boundary of said Devon Manor; thence, N 55°-20'-00" W, 127.41 feet, more or less, to a point on the eastern line of said Lot 76; thence, N 60°-14'-25" E, 56.86 feet, more or less, along said eastern line of Lot 76 to the point of beginning.

CONVEYANCE AGREEMENT

THIS CONVEYANCE AGREEMENT made this 2^{nOl} day of December 2013, between the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia ("City"), and JOEL J. LOPEZ AND KELLEY LEE LOPEZ, ("Lopez").

RECITALS:

- A. City is the owner in fee simple absolute of a certain parcel of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, more particularly described in Exhibit A, attached to and made a part of this Agreement (the "Property"), the City having acquired the same pursuant to the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended.
- B. Upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument No. 110013046, a copy of which is attached as Exhibit B, which document provides, <u>inter alia</u>, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City.
- C. The acquisition of the Property by the City resulted in the City owning non-standard lots that abut certain property owned by Lopez.
- D. The conveyance of the Property to Lopez will enable Lopez to care for and maintain the Property in a manner that will enhance both the appearance and value of their adjoining property, as well as the other properties located in that section of the City, thereby relieving the City of the burden and expense of caring for and maintaining the Property, while at the same time returning the Property to the real estate tax rolls.
- E. The City therefore desires to convey the Property to Lopez and Lopez desires to have the Property conveyed to Lopez in accordance with the terms and conditions of this Agreement.
 - F. These recitals are incorporated by this reference into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and specifically Lopez's agreement to assume the responsibility and expense of caring for and maintaining the Property in a manner that will enhance the neighborhood and meet any applicable requirements of the Norfolk City Code, the City agrees to convey and Lopez

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agrees to accept the conveyance of the Property, together with all easements, rights, and appurtenances thereto as follows:

1. <u>CONVEYANCE</u>.

. . . .

- a. The City agrees to convey the property to Lopez, "AS IS," by Special Warranty Deed, free and clear of all encumbrances, tenancies, and liens (for taxes or otherwise), except as may otherwise be provided in this Agreement, subject to applicable easements and restrictive covenants of record, and specifically the Restrictive Covenants attached hereto as Exhibit B. Lopez shall assume the responsibility and expense of caring for and maintaining the Property in a manner that will enhance the neighborhood and meet the requirements of any applicable provisions of the Norfolk City Code.
 - b. Possession of the Property will be given to Lopez at Closing.
- c. City agrees to pay the expenses of preparing the deed. Lopez will pay all other fees and costs charged in connection with the transfer of the Property and the recordation of the deed.
- d. Lopez acknowledges and agrees that the City is represented by the City Attorney and that the City Attorney cannot and will not represent Lopez's interests in this matter.
- 2. <u>PURCHASE PRICE</u>. Due to the non-conforming size of the Property and its very limited use and lack of marketability, Lopez shall not be required to pay any monetary compensation to the City for the conveyance of this Property, in accordance with City policy regarding the conveyance of side lots under the GEM program.
- 3. <u>CLOSING</u>. The Closing will be made at the offices of the Norfolk City Attorney, in Norfolk, Virginia 23510, or such other location as the parties may agree, within 120 days of the effective date of the ordinance authorizing the conveyance of the property by the City ("Effective Date"), unless extended by mutual agreement of the parties.
- 4. <u>CONDITIONS</u>. Lopez's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of Lopez, it being understood that the City is under no obligation whatsoever to expend any funds to satisfy any of these conditions. If any one of the following conditions cannot be met within 120 days after the Effective Date, Lopez may unilaterally terminate this Agreement:
 - a. Receipt of a satisfactory title commitment.

- b. Receipt of a Phase I Environmental Assessment and Report (Phase I Report) conducted and prepared by an environmental engineering and inspection company selected by Lopez at Lopez's expense, and such other testing and reports as may be reasonably required by Lopez or recommended in the Phase I Report, any such additional testing and reports to be at Lopez's expense.
 - c. Satisfaction by the City of all of his obligations under this Agreement.
- 5. <u>NO REPRESENTATIONS AND WARRANTIES BY CITY</u>. Lopez acknowledges that the City has made no representations or warranties whatsoever in regard to the Property.
- 6. <u>LOT NOT BUILDABLE.</u> Lopez acknowledges that the Property being conveyed, standing alone, is not of sufficient size or dimension to permit the construction of a single family dwelling under the regulations of the City of Norfolk currently in effect.
- 7. <u>NOTICES</u>. All notices to the parties hereto will be delivered by hand, via certified mail return receipt requested, or via facsimile and all be deemed effective upon delivery if by hand and upon confirmation of receipt if by other means, to the following address until the address is changed by notice in writing to the other party:

Lopez:

. .

Joel J. Lopez

Kelley Lee Lopez 8473 Portal Road

Norfolk, Virginia 23503

City:

Department of Communications

City of Norfolk

City Hall Building – 3rd Floor

810 Union Street

Norfolk, Virginia 23510 Attn: David Yaeger

With a copy to:

Bernard A. Pishko

City Attorney

900 City Hall Building 810 Union Street

Norfolk, Virginia 23510

8. <u>SURVIVAL</u>. The provisions contained in this Agreement will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

9. <u>BROKERAGE OR AGENT'S FEES</u>. Neither the City nor Lopez are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by the City as a result of this transaction. The City shall not have any obligation whatsoever to pay any brokerage or agent's fees or commissions, nor shall the City have any obligation whatsoever to see that any such fees or commissions are paid.

10. **DEFAULT AND REMEDIES.**

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- a. If the conveyance contemplated by this Agreement is not consummated because of City's or Lopez's default, the non-defaulting party may elect to:
 - (i) Terminate this Agreement; or
 - (ii) Seek and obtain specific performance of this Agreement.
- 11. <u>REVERSION OF TITLE</u>. Lopez acknowledges that this conveyance is subject to the Restrictive Covenants attached as Exhibit B, including the right of reverter as set forth therein.
- 12. <u>ENTIRE AGREEMENT</u>. This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties.
- 13. <u>GOVERNING LAW</u>. This Agreement is to be construed in accordance with the laws of the Commonwealth of Virginia.
- 14. <u>SUCCESSOR/ASSIGNMENT</u>. This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns.

WITNESS the following duly authorized signatures and seals:

(SIGNATURE PAGES TO FOLLOW)

4

CITY OF NORFOLK

	By:			
	City Manager			
ATTEST:				
City Clerk				
COMMONWEALTH OF VIRGINIA CITY OF NORFOLK, to-wit:				
I,	n of office expires Manager and R. whose names a	on Breckenridge Da as such are sign	, do hereby aughtrey, City Clerk, ed to the foregoing	
Given under my hand this	_day of		, 2013.	
	Notary Public	C		
	Registration	No		
APPROVED AS TO CONTENTS:				
Manager of Real Estate				
APPROVED AS TO FORM AND CORRECT	NESS:			
Deputy City Attorney				

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JOEL J. LOPEZ

STATE OF VIRGINIA

CITY/COUNTY OF NORFOLK, to-wit:

Given under my hand this 2 day of December 2013.

Kinbarly Markowski Novary Public

Registration No. 2/33 45

AND AND STAFF

KELLEY LEE LOPEZ

STATE OF VIRGINIA

CITY/COUNTY OF NORFOLK, to-wit:

I, <u>Linually Modella Notary Public</u> in and for the City/County of Norfolk, in the State of Virginia, whose term of office expires on <u>4/35/25/4</u>, do hereby certify that Kelley Lee Lopez, whose name is signed to the foregoing Conveyance Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 2nd day of December 2013.

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Kineberly Markouder

Registration No. <u>21334</u> S

EXHIBIT "A" Tax Account Number 0275-4900

Triangular Lot East of Lot 76 And Southwest of Portal Road

An irregular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: BEGINNING at a point that is the northeast corner of Lot 76, said point being shown on a plat entitled, "Section 1, Devon Manor," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 26 at Page 91; thence, from the point of beginning thus described, S 29°-45'-35" E, 114.04 feet, more or less, along the western line of Portal Road to a point on an eastern boundary of said Devon Manor; thence, S 33°-12'-00" W, 2.07 feet, more or less, to a point on the southern boundary of said Devon Manor; thence, N 55°-20'-00" W, 127.41 feet, more or less, to a point on the eastern line of said Lot 76; thence, N 60°-14'-25" E, 56.86 feet, more or less, along said eastern line of Lot 76 to the point of beginning.

	Instrument Control Number		Lappoper			
•	Commonwealth of Virg Land Record Instruments Cover Sheet - Form A	inia 00 30	146 2011 JU	L-5 PM 4:5		
	[ILS VLR Cover Sheet Agent 1.0.66]					
T C A O R P E X	Date of Instrument: [7/5/2011] Instrument Type: [DRC] Number of Parcels [1] Number of Pages [6]			;		
E M	City County City Of Norfoll					
P	Last Name	First and Second Gra	Intors Middle Name or Initial	Suffix		
	[City of Norfolk] [][]	[]		
Last Name		First and Second Gra	ntees Middle Name or Initial	Suffix		
	[City of Norfolk] [][]	[]		
	[] [Grantee Address (Name) (Address 1) (Address 2) (City, State, Zip)	•		I]]] A] [23510]		
	Consideration [0.00] Exis	ting Debt [0.00	Assumption Balance [0.00]			
	Prior Instr. Recorded at: City Cor Book [] Pag Parcel Identification No (PIN) Tax Map Num. (if different than PIN) Short Property Description	unty [[ge] Percent. in this Ju Instr. No [uris. [100]]]]		
	Current Property Address (Address 1) (Address 2) (City, State, Zip)	Ī][VA]		
	Instrument Prepared by Recording Paid for by	[Charles S. Prentace [n/a		1		

Norfolk

[2010-142299

[Charles S. Prentace

[900 City Hall Building

[810 Union Street



Customer Case ID

Return Recording to (Name)

(Address 1)

(Address 2)

(City, State, Zip)

DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS RELATIVE TO PROPERTY LOCATED AT SS PORTAL ROAD (TAX ACCOUNT #0275-4900)

THIS DECLARATION, made this ______ day of ______, 2011, by the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia ("Declarant"), whose address is City Hall, 810 Union Street, Norfolk, Virginia, 23510.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property described in Exhibit A, attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant, in order to provide for orderly development, improvement and maintenance of the Property, and the surrounding neighborhood, deems it suitable and appropriate to establish and publish certain standards and restrictions and to impose the same upon the Property;

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits accruing to Declarant, to the surrounding neighborhood, and to subsequent purchasers of the Property, Declarant does hereby declare said Property to be subject to the following covenants, which covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the Property or any part thereof.

A. PERMITTED AND PROHIBITED USES.

- 1. Any construction on or development of the Property shall be in keeping with the City of Norfolk's General Plan, as well as the City's neighborhood plans, as such plans may be approved from time to time by the City Council.
- 2. No building or structure of any kind shall be constructed, altered or permitted on the Property without the prior written approval of the design of such building or structure by the Director of City Planning for the City of Norfolk ("Director"). A set of plans shall be submitted to the Director for approval as set forth herein.
- 3. All buildings and structures located on the Property shall be kept in good repair and the Property shall be kept in compliance with all City codes and ordinances.
- 4. If the Property is located on a street or in a district that is designated as an underground street or district under the provisions of the Norfolk City Code, 1979, as amended ("City Code"), then any building or structure located on the Property shall be served by underground utilities, and no above ground poles and wires shall be permitted, unless otherwise provided in the City Code.

B. <u>REVIEW AND APPROVAL OF PLANS</u>

1. All plans for any new buildings or structures to be located on the Property, including any additions to existing buildings or structures, must be presented to and approved by the Director in writing prior to the commencement of any construction.

- 2. The Director shall approve or disapprove plans submitted to him within forty-five (45) days after an application has been made to him. If the Director fails to act within the said 45 days, the application shall be deemed to have been approved. In the event the plans are disapproved by the Director, the party submitting the plans shall have 45 days from the date of such disapproval to submit revised plans, such revised plans to contain any revisions required by the Director.
- 3. The plans required to be submitted to the Director for approval shall include a full set of construction plans and site plans.
- 4. The construction of any building or structure on the Property must commence within ninety (90) days of the receipt of approval by the Director. Work thereon shall be prosecuted diligently and must be completed within a reasonable time not to exceed twelve (12) months from the date construction commences.

C. GRANTEE'S ACCEPTANCE

The Grantee of the Property subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of the Property, shall accept such deed or contract upon and subject to each and all of these protective and restrictive covenants and the agreements herein contained, and also the jurisdiction, rights, and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, consent, and agree to and with Declarant to keep, observe, comply with, and perform said protective and restrictive covenants.

D. <u>EFFECTS OF PROTECTIVE AND RESTRICTIVE COVENANTS.</u>

- 1. These protective and restrictive covenants shall run with the Property and shall be binding upon all parties and all persons claiming under them.
- 2. These protective and restrictive covenants may be changed, modified, or amended by a duly recorded instrument signed by the Declarant and the then current owner of the Property.
- 3. Each and every protective and restrictive covenant contained herein shall be considered to be an independent and separate covenant and agreement, and in the event that any one or more of said protective or restrictive covenants shall, for any reason, be held to be invalid or unenforceable, all remaining protective and restrictive covenants shall nevertheless remain in full force and effect.
- 4. The failure of any party or person to enforce a protective or restrictive covenant contained herein in any instance or against any person shall not constitute a waiver or abrogation of said protective or restrictive covenant.

E. REMEDIES.

The Declarant or any party to whose benefit these protective and restrictive covenants inure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these protective and restrictive covenants, and the court in any such action may award reasonable expenses in prosecuting such action, including attorney's fees. In addition to any other remedy available at law or in equity, a violation of any protective or restrictive covenant contained herein shall, in the sole

discretion of the Declarant and upon the giving of written notice to the then current owner of the Property, cause the title to the Property to revert to the Declarant.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written. CITY OF NORFOLK [SEAL] Attest: Approved as to form and correctness: Deputy City Attorney STATE OF VIRGINIA CITY OF NORFOLK, to-wit: PACY DA HOUSE a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 30 day of 2014, do hereby certify that Marcus Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated 30 acknowledged the same before me in my City and State aforesaid. Given under my hand this _ day of 7056195

Notary Public

EXHIBIT "A"

Triangular Lot East of Lot 76 And Southwest of Portal Road

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INSTRUMENT #110013046
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
JULY 5, 2011 AT 04:54PM

GEORGE E. SCHAEFER, CLERK RECORDED BY: TLD



OFFICIAL RECEIPT NORFOLK 100 ST PAUL'S BOULEVARD NORFOLK, VA 23510 757-664-4380

DEED RECEIPT

DATE: 07/06/11 TIME: 12:16:16 ACCOUNT: 710CLR110013046 RECEIPT: 11000030242 CASHIER: TLD REG: NU86 TYPE: DRC PAYMENT: FULL PAYMENT
INSTRUMENT: 110013046 BOOK: PAGE: RECORDED: 07/05/11 AT 16:54 GRANTOR: CITY OF NORFOLK EX: N LOC: CI EX: N PCT: 100% GRANTEE: CITY OF NORFOLK -AND ADDRESS: 810 UNION STREET NORFOLK, VA. 23510 RECEIVED OF: CITY OF NORFOLK DATE OF DEED: 07/05/11 : \$.00 DESCRIPTION 1: SS PORTAL ROAD PAGES: 6 OP 0 2: NAMES: 0 .00 A/VAL: CONSIDERATION: .00 MAP: 0275-4900 PIN: 0275-4900 000 ** ZERO PAYMENT ** .00 TENDERED :

CLERK OF COURT: GEORGE E. SCHAEFER

AMOUNT PAID: CHANGE AMT :

.00

PAYOR'S COPY
RECEIPT COPY 1 OF 2

SS Portal Road

